TL 1537 e

COMISSÃO PARA OS DIREITOS DO POVO MAUBERE *

Comissão constituída para apoiar as posições de **Fretilin** na Sessão sobre **Timor Leste** do Tribunal Permanente dos Povos

Commission constituted to support the positions of **Fretilin** in the Session on **East Timor** of the Permanent Peoples Tribunal

DOC Nº1
THE QUESTION OF EAST-TIMOR
AT THE PERMANENT PEOPLE'S TRIBUNAL

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1. THE QUESTION OF EAST TIMOR AT THE PERMANENT PEOPLE'S TRIBUNAL

The Permanent People's Tribunal meets in Lisbon on 19, 20, 21 and 22 June, 1981 for a session of hearings on the crimes committed in East Timor by the colonial-expansionist regime of Indonesia.

The judicial proceedings were initiated by the lodging of the APPEAL OF THE PEOPLE OF EAST TIMOR, THE MAUBERE PEOPLE to the PERMANENT PEOPLE'S TRIBUNAL, which is founded on the following charges:

1. Violation of the Right of the People of East Timor to Political Self-determination;
2. Repression of the Maubere Culture and Nationality;
3. War Crimes;
4. Economic Exploitation and Opression;
5. Complicity of U.S.Imperialism;

The'Comissão para os Direitos do Povo Maubere', recently set up in Lisbon, is working to colect and marshall all evidence, in fact and in law, to support the above complaint presented by the FRETILIN and the Government of the Democratic Republic of East Timor (DRET) and to document without shadow of doubt the various crimes committed and being committed by the indonesia regime with the complicity of the United States and other western powers such as the Netherlands (permanent chairman of the IGGI - Intergovernamental Group for Indonesia) and Australia.

The trial in the course of its various stages will expose by means of statements by Maubere - FRETILIN representatives and refugees - and foreign witnesses and the fullest documentary proofs, the horrors of a war of agression that the international press sees fit to ignore, silence or distort; will show once more, the generalized rejection by the Maubere People of the occupation of their country, a rejection which is now even shared by persons linked to the puppet organizations which appeared in East Timor to play their historical role as the Trojan horse of imperialism and Djakarta's colonial-expansionism; finally, will testify, it is expected, to the justness of the War of National Resistance of the Maubere People under the leadership of FRETILIN against the attempt at the recolonization of their country and the consequent extinction of the Maubere People and Nation.

Thus a greatbattle is to be fought, in the field of law, by FRETILIN and the government of the Democratic Republic of East Timor as well as by all democratic and progressive forces throughout the world committed to the cause of the Maubere People, in order to obtain the condemnation of the authors of the referred crimes - war crimes, genocide, crimes against humanity - and perpetrated in East Timor since the moment when the sovereignity and territorial integrity of the DRET, established on 28 November 1975, were violated.

2. THE PERMANENT PEOPLE'S TRIBUNAL AND THE UNIVERSAL DECLARATION OF THE RIGHTS OF PEOPLES

"At the moment there is no international tribunal in existence before which persons who have committed offences or crimes against human rights can be charged and tried.

The machinery of the European Commission and Court of Human Rights operates the observance of the rights guaranteed by the European Convention on Human Rights, so far as the European signatories of the Convention are concerned. In Europe, an individual or a group of individuals may bring complaints against their governments and get redress. However, that machinery is unique. And even though complaints can be heard and decisions given on them, the European institution does not operate a criminal code. It holds the government concerned responsability, not the individual, and its remedies are civil, not criminal. Then it is up to the State itself to prosecute the persons who have committed the wrongs.

Of course, this is still a great advance on the rest of the world, and the European Convention, because of its machinery, does foster respect for human rights and fundamental freedoms in the countries parties to the Convention. The machinery, such as it is, of the European Convention does not appear in any of the other international agreements which are relied on in the world to secure respect for human rights.

International agreements such as the Geneva Conventions and the Geneva Protocol which prohibit certain methods of warfare and the regular behaviour during warfare, the Genocide Convention, which prohibits genocide, or the Convention on Slavery, which prohibits slavery, for

example, have no machinery which an aggrieved person can claim a breach of the Convention.

The United Nations International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights have some enforcement machinery, but not that of individual recourse. And in all the agreements, there is no way in which an individual or individuals can de tried for failing to observe the rules.

As a result it is only when a repressive leader is toppled that he and his officials become answerable for their crimes.

After World War II, the Nuremberg Tribunal was established to prosecute German and Japanese leaders as war criminals for the genocide and other acts of inhumanity committed against minorities and for war crimes. That Tribunal created a precedent for the idea that leaders of governments and their subordinate officials are responsible for their acts and can be brought to account. The fault with the Tribunal was that it consisted of the victors trying the vanquished, and it was on an ad hoc basis only.

There was no question of trying Allied leaders and officials for their crimes. But although flawed as a legal proceeding, the Nuremberg Tribunal represented an important step forward. It created a precedent for the idea that leaders of governments and their subordinate officials are responsible for their acts and can be brought to account before an international tribunal.

It affirmed the reality of crimes against humanity and crimes against peace, as well as the more familiar crimes arising from violations of the laws of war. The Judgement of the Tribunal of Nuremberg was also a promise to generalise the occasion of prosecution so as to make it an ingredient of international order.

After the Nuremberg Judgement in 1946, the General Assembly of the United Nations affirmed the principles of international law recognised by the Charter of the Tribunal and the Judgement of the Tribunal. The General Assembly then directed the International Law Commission to formulate the principles of international law recognised by the Tribunal and to prepare a Draft Code of offenses against the peace and security of mankind.

In 1949, the International Law Commission formulated the Nuremberg Principles as follows:

1. Any person who commmits an act which constitutes a crime under international law is responsible therefore and liable to punishment;
2. The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law;
3. The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law;
4. The fact that a person acted pursuant to order of his government or of a superior does not relieve him from resposibility under international law, provided a moral choice was in fact possible to him;
5. Any person charged with a crime under international law has the right to a fair trial on the facts and law;
6. The crimes hereafter set out are punished as crimes under international law:

A. Crimes against peace:

a. Planning, preparation, initiation or waging of a war of agression or a war in violation of a international treaties,agreements or assurances;

b. To take part in a concerted plan or a plot to bring about any of the acts mentioned in article 1 above.

B. War crimes:

They are breaches of the laws and customs of war including, but not exclusively, the assassination, maltreatment or deportation for forced labour or for any other purpose of the civilian population in occupied territory, the assassination or maltreatment of prisoners of war or those at sea, the execution of hostages, the pillaging of public or private property, the destruction of towns or villages without reason or devastation which is not justifiable on military grounds.

C. Crimes against humanity:

They are assassination extermination, enslavement, deportation or any other inhuman act against any civil population or persecution for political, racial or religious reasons, when such acts or persecutions are committed as a result of a crime against

peace or a war crime or in conjunction with such crimes.

7. Complicity in the matter of crimes against peace, war crimes or crimes against humanity as defined in article 6 also constitute a crime under international law.

Then the International Law Commission set about drafting the Code of Offences against the Peace and Security of Mankind, which is finalised in 1954. However, it had not drafted an instrument to implement the Code, for the rather silly reason that it had not been asked to do so. So while there is now a Draft Code of Offences, there is no way to enforce it even suggested.

The International Law Commission then got side-tracked by the General Assembly into defining "Agression" and remained on the question for the next 20 years. A definition was finally approved by the General Assembly in 1974. The Draft Code was re-submitted to Member States for observation, and it is still before the General Assembly for consideration.

While these long drawn-out proceedings have been going on at the United Nations of course, wars have been waged, minorities oppressed, and people victimised and nothing has been done against the perpetrators unless in the particular circunstances of the case, it has been politically suitable. Many people, not unnaturally, became impatient of this institutional void, and in 1967 Bertrand Russell, Jean Paul Sartre and other concerned individuals established the Bertrand Russell War Crimes Proceedings. The Russel Tribunal, as it came to be called, assembled a distinguished "jury of conscience" on an ad hoc basis to hear of the crimes being committed by the Americans in Vietnam (where, incidentally not even the rules laid down by the Geneva Conventions were applicable, because no war had ever been declared). The Tribunal was attacked and its conclusions scorned by many who held that justice can only be meted out the State. As General de Gaule said "I have no need to tell you that justice of any sort, in principle as in executions, emanates from the State. Without impugning the motives which have inspired Lord Russel and his friends, I must recognise the fact that they have no power whatsoever nor are they the holders of any international mandate, and that therefore they are unable to carry out any legal action."

But the point of the Tribunal was that precisely because no govern-

mental action was taking place to call a halt to the gross violations of the laws of war and the crimes against humanity, public opinion had to voice its protest. Sartre said "If the masses ratify our judgement, then it will become truth, and we, at the very moment we efface ourselves before the masses who make themselves the guardians and the mighty support for the truth, we will know that we have been legitimised and that the people, showing us its agreement, is revealing a deeper need - the need for a real 'War Crimes Tribunal' to be brought into being as a permanent body......"!

More than a decade has passed since the Russel Tribunal was established in 1967, and the spread of imperial and fascist regimes is rampant throughout the Third World. The need to expose the crimes committed by these regimes is greater than ever, especially as their commission is so widespread and disguised by a virtual official conspiracy of silence. The circunstances of crimes against helpless peoples, stockpilling of weapons of mass destruction and abuses of minorities demand that something be done outside the formal structures of conventional diplomacy.

It is against this background that the contribution of Lellio Basso must be understood. He served as a member of the original Russel Tribunal. In the interim he was a tireless fighter on behalf of opressed peoples, especially in the anti-imperial areas of the Third World. Lellio Basso acted as President of the Russel Tribunal II, established in 1973 as a response to the geheral deterioration of democratic rights in Latin America, which culminated in the Pinochet coup of September 1973 against the Allende government. The Russel Tribunal II was inspired by the earlier Russell initiative, but formally of quite independent origins, and it held a series of three sessions between 1974-76 which helped public consciousness as to the varieties of opression taking place in different Latin American countries. A third application of the approached occured when the Russell Foundation in England convened Russell Tribunal III in April 1978 to enquire into certain civil rights violations in West Germany. What is expressed by the recourse to such proceedings is the utility of the approach - that it is important that witneses demonstrate beyond a reasonable doubt that specific violations of human rights have occured and ought to be punished. The impact tends to be educational and mobilising. (1)"

On July 4, 1976, under the initiative of the Lellio Basso Foundation and the International League for the Rights and Liberation of Peoples, political and religious leaders, economists, jurists and representatives from several National Liberation Mouvements, proclaimed, in Algiers, the Universal Declaration of the Rights of Peoples.

On the following day, the algerian national newspaper, El Moudjahid, published a long editorial which started with the following statement: " The Universal Declaration of the Rights of Peoples, was born yesterday at Algiers. At the end of four days the International Conference which met at the Palais des Nations adopted this historic document which will be a new weapon in the hands of people to make their political and economic rights respected." A year later, at the same place in Algiers, Lellio Basso spoke of it in the following terms: "It seemed to us at the time that the first task of an organisation set up to defend the rights of peoples and to struggle for their liberation should be to state clearly the rights of peoples, on the basis of the immense work accomplished during these past thirty years at the United Nations Assemblies, and also at many other international conferences, especially those organised by the countries of the Third World. It was not, therefore, a case of our inventing an utopian declaration of abstract principles, but of demonstrating that, side by side with traditional law, the law of States, a new international law, the law of Peoples, has arisen, which, in spite of many contrasts and resistance on the part of conservative sectors has been progressively asserting itself, starting with the enunciation of Wilson's principles sixty years ago and the proclamation of the rights of the peoples made at almost the same time by the Russian Revolution, up to the continous insistence of the U.N on the right to self-determination, of which the 1960 resolution on decolonization, was the most important contribution. It is on this basis that the document elaborated at Algiers sets out thirty articles, whioh constitute a legal whole in an international manifesto.

It is true that this document is the fruit of private elaboration,

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(1) Muireann O'Briain is a Barrister-at-Law in Dublin, Ireland, and was the Council for the Prosecution in the Permanent Peoples'Tribunal Session on the Philippines, Antwerp, Belgium, 30 October - 3 November 1980

even if the lawyers who took part in it have an international reputation. It is true that it comes from an international organization, ours. It is true that those who signed it on 4 July 1976 were not making commitments on behalf of governments or official organizations. Nevertheless this document has entered the Law Faculties of Universities, faculties which are often temples where past idols are adored, fortresses where social conservantism is defended. It has become the subject of courses, seminars, round-tables, debates, to such an extend that a volume will shortly come out in Paris, containing over twenty essays written by lawers from all over the world, from the U.S.A. to France, from Chile to Belgium, from Egypt to Italy, who examine, study, explore the significance of the document, already known as the Algiers Declaration.

The U.N.Commission on Human Rights has also spoken of the Algiers Declaration. We think that we are being good prophets in affirming that its influence will continue to spread, and that the value of its principles will gradually be recognised, if not by all, at least by humanity's progressive majority."

François Rigaux in the concluding report said: " The third originality of the Algiers Declaration is that it comes from the labour of peoples, finds its inspiration in their sufferings, they have been chosen as recipients, the Lellio Basso Foundation for the Rights and Liberation of Peoples is the offshoot of Russel Tribunal II for Latin America. Representatives from many liberation Mouvements from all parts of the world took an active part in working out and drafting the Algiers Declaration. Beyond the phraseology of the national constitutions, or the U.N. Charter, the authors of the Declaration wanted to study this new aspect of international law, the people, whose colective rights have too often been concealed by classic individual rights, in the way that the trees hide the forest. Above all the fiction should be destroyed, according to which the Government which regulary exercises power over a territory is a valid spokesman for the people whose rights it has destroyed. (...) Another synthesis which stands out clearly in the Declaration is the overall vision of the Rights of the Peoples, human rights and international law. The effective realization of human rights is illusory in a society whose colective rights have not been previously or conjointly consolidated: It was considered unnecessary to make another statement of

and communal relationships which he cannot forego without losing his personal identity, without being trasformed into an anonymous and impersonal being, which is for example, the case of immigrants. Man only exists as a social being, that is to say as a member of a community with which he generally shares the language, culture forms of expression, that is to say, language in the largest sense of the word, which is the means of communication, the way of feeling himself to be a man. Once man's true nature has been perceived and man has been recognised as the fundamental reality, it follows that the community of men, that is to say, peoples and national minorities, are the one subjects of history and the state is nothing in itself it has not or should not have any powers other than those atributed to it by the popular colectivity for its pratical aims. The subjects of history and even the subjects of law are therefore peoples and in the first place of the law of self-determination, lato sensu, of course, with the regard to the exterior as independence and true sovereignity and with regard to the interior as democracy and popular soverei gnity. We think that it is only in this way that human rights will finally be guaranted, because the state which is an emanation of this people will no longer be opposed to the citizens, but will identify with them. Naturally to arrive at this result it is necessary to arrive at Socialism and the suppression of classes. But we conceive the struggle for the Rights of Peoples precisely as a struggle for Socialism."

On the basis of these concepts, having ascertained the shortcomings of international legal system, the Permanent People's Tribunal will have the misssion to speak out concerning serious cases of violations of the Rights of Peoples.

human rights in the Algiers Declaration, since these are known by all, even if not sufficiently respected. It is in this spirit, that the Declaration recognises that peoples have rights against their own governments or against those who have usurped this tilte. The Declaration specifies what is meant by People, identifying it with the largest sections of the population, whose advencement and well-being should be the essential objective of every government. (...) As Jean-Jacques Rousseau already observed, despotic governments which fight wars against their own subjects also carry on aggressive foreign policiesand constitutes a danger to international peace. Internal oppression is put at the service of imperialism, and it is for this that efective respect of human rights is a fundamental concern of internal law."

On June 24. 1979, the Permanent People'sTribunal (PPT), was set up at Bologna The PPT is the logic outcome of the legal and political discussion of Russel Tribunal II for Latin America, of the Universal Declaration of the Rights of Peoples, as well as the activities of the Foundation and the League around this central theme. Lellio Basso worked to set up this Tribunal, which he considered an essential stage in the developpment of the entreprise in which he and many collaborators with world-wide reputations were involved. Let us, yet again, quote his thought, expressed a few weeks before his death in an interview for the review La Société (nº19, December 1978), which explains how an activity, which started as a battlefor human rights, should have evolved into a vaster and more complete battle for the Rights of Peoples: " Our commitment to the Rights of Peoples intends to be a further development, a reinforcement and, if I may be allowed to say so, an advance over the charters for the Rights of Man. These last were born about two centuries ago, first in the U.S.A. then in France, when the bourgeoisie took over power, and they are typical expressions of the individualist bourgeois conception of man and society. In substance they are based in a distinction between the citizens and power, and compel this last to respect an autonomous sphere of liberty for the citizen. One doctrinal current clearly spoke of self-limitation of State sovereignity, which is in this way recognised as the true and legitilate wielder of sovereignity.

Our conception, on the other hand, starts from the recognition that man is the moment of reality, not man in isolation, simple man, abstract man, but concrete man plunged in the totaly of his social

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